IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.Nos.29573 and 41014 of 2002

W.P.No.29573 of 2002:

M.Loganathan .. Petitioner

versus

1. The Government of India rep. By
   Commissioner of Income Tax-II
   67A, Race Course Road
   Coimbatore-18.

2. The Assessing Officer-cum-
   Income Tax Officer
   Income Tax Department
   Ward-I (1), Erode. .. Respondents

W.P.No.41014 of 2002:

M.Loganathan .. Petitioner

versus

1. The Settlement Commissioner
   (IT & WT)
   No.448, 489, Anna Salai
   Chennai-600 035.

2. The Commissioner of Income Tax (Appeals)
   No.121, Mahatma Gandhi Road
   Chennai-600 034.

3. The Income Tax Officer - Ward I (1)
   Erode. .. Respondents

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For petitioner in both writ petitions : No appearance
For respondents in both writ petitions : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

PRAYER: W.P.No.29573 of 2002 is filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari, calling for the records of the first respondent culminated in and by his proceedings in C.C.No.221 (27, 28, 29/01-02) dated 10.4.2002, quash the same and consequently directing the first respondent to decide the application filed by the petitioner under Section 264 of the Income Tax Act on merits and in accordance with law and W.P.No.41014 of 2002 is filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari to call for the records of the first respondent dated 19.9.2000 in Settlement Application No.641/CBE/8/99-IT and to quash the same.

For petitioner : No appearance

For respondents : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

ORDER

(Order of the Court was made by CHITRA VENKATARAMAN,J.)

W.P.No.29573 of 2002 is against the order of the Commissioner of Income Tax-II, Coimbatore, seeking a writ of certiorari to quash the order dated 10.4.2002. W.P.No.41014 of 2002 is filed by the very same petitioner against the order of the Settlement Commission, the first respondent therein, wherein the petitioner seeks a writ of Certiorari to quash the order dated 19.9.2000.

2. It is seen that the petitioner, an assessee on the file of the second respondent, filed a petition for settlement of his case under Section 245(1) of the Income Tax Act, 1961, before the Settlement Commission, the first respondent in W.P.No.41014 of 2002, on 19.9.1999. It is stated by the petitioner herein that he had preferred appeals in respect of the assessment years 1992-93, 1993-94 and 1996-97. By letter dated 23.3.2000, the Chartered Accountant representing the petitioner herein, filed a petition before the Commissioner of Income Tax (Appeals) for withdrawal of the above appeals. Accordingly, the Commissioner of Income Tax (Appeals) the second respondent in W.P.No.41014 of 2002, by order dated 30.3.2000, dismissed the appeals as infructuous. When the matter was taken up by the Settlement Commission, the first respondent herein noted that the petitioner had withdrawn the appeals, which would relate back to the date of filing of the application dated 19th July 1999. Once the appeals were withdrawn, it would mean that no appeals were filed

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at all and pending as on the date of the filing of the application under Section 245(1); as such, the application before the first respondent itself is not maintainable. In the circumstances, the conditions necessary for entertaining the application for settlement itself not existing, the application for settlement itself was liable to be rejected. Thus, by order dated 19.9.2000, the application relating to the assessment years 1992-93, 1993-94 and 1996-97 stood was rejected by the first respondent in limine.

3. Thereupon, the Chartered Accountant filed an application before the second respondent by swearing to an affidavit, stating that on the misunderstanding and misconstruction of the relevant provisions of the Act, the appeals were withdrawn. He further submitted that since the maintainability of the application before the first respondent itself is dependent on the pendency of proceedings before the Tax Authorities, he prayed that the order passed on 30.3.2000 be withdrawn and the appeals restored.

4. It is stated that the petitioner preferred a petition before the Commissioner of Income Tax-II Coimbatore, under Section 264 of the Income Tax Act, seeking admission of his revision. He also filed an application for condonation of delay of 19 months in preferring the application. He stated therein that the authorised representative had not obtained any consent before withdrawing the appeal and that he came to know about the withdrawal only long thereafter. He also referred to the major fire accident that took place on 8.12.1999 causing heavy damage to his business. Hence, he prayed for condonation of delay.

5. By order dated 10.4.2002, the Commissioner of Income Tax-II, Coimbatore, rejected this petition on the view that the assessee had not explained satisfactorily as to why it took 19 months for the petitioner to prefer an application under Section 264 of the Income Tax Act and that his contention that he was prevented from filing a petition under Section 264 in view of the fire accident bore no substance. Considering the fact that the assessee had not proved the delay with sufficient cause, the petition was dismissed.

6. The writ petitioner has preferred the writ petition challenging the order of the Commissioner of Income Tax-II, Coimbatore, in W.P.No.29573 of 2002, wherein, the Commissioner of Income Tax-II is the first respondent.

7. Aggrieved by the order of the Settlement Commission dated 19.9.2000, W.P.No.41014 of 2002 has been preferred by the petitioner seeking the prayer of a writ of certiorari to quash the order.

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8. Learned counsel appearing for the petitioner submitted that the mistake committed in withdrawing the appeal was bona fide, and hence, the Settlement Commission should have taken up the case for consideration on merits.

9. We do not agree with the submission made by the learned counsel for the petitioner. One of the requirements for entertaining the application for settlement under Section 245-C is the pendency of the proceedings before the Tax authorities. Since admittedly the withdrawal of the appeal means no pendency of the proceedings before the Tax authorities, rightly the Settlement Commission rejected the prayer for settlement as regards the assessment years 1992-93, 1993-94 and 1996-97. However, as regards the assessment year 1997-98 considering the pendency of the proceedings for the said assessment year, the Settlement Commission took up the matter for consideration. Considering the legal requirement for the maintainability of the application before the Settlement Commission, we do not find any infirmity in the view taken by the Settlement commission. Consequently, W.P.No.41014 of 2002 is dismissed.

10. As regards W.P.No.29572 of 2003 seeking a writ of certiorari to quash the order of the Commissioner of Income Tax-II dated 10.4.2002 dismissing the petition to condone the delay, we do not find any ground to reject the reasons stated therein for rejecting the application for condonation of delay in preferring the revision. Consequently, W.P.No.29572 of 2003 also stands dismissed. No costs. Connected W.P.M.P.No.48001 of 2002 is closed.

ksv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

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   Commissioner of Income Tax-II
   67A, Race Course Road
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5. The Income Tax Officer - Ward I (1)
Erode.

+ One cc to M/s Pusyasitaraman Sr. Standing Counsel for Income Tax, SR 15767

MA (co)

sg 23/4/07

W.P.Nos.29573 and 41014 of 2002
Dated: 14.03.2007

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